

EXHIBIT H (PART 2)

MACIEJ KOWALEWSKI
 September 12, 2007

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(1) **M. Kowalewski**
 (2) they were plotted by me.
 (3) If I missed a plot, for sure
 (4) automatic acquisition zone was picking up the
 (5) target and the trails as well as they were shown
 (6) on the radar.
 (7) Q: Between 12 noon and 1300, did you
 (8) keep your eye on the radar screen constantly?
 (9) A: Constantly.
 (10) Q: Okay.
 (11) So from 12 noon to 1 p.m., you were
 (12) completely involved in watching the radar screen?
 (13) A: Yes.
 (14) Q: You did nothing else?
 (15) A: Excuse me?
 (16) Q: You didn't do anything else. You
 (17) said that was the only thing were you doing?
 (18) A: Also hearing the fog signal from the
 (19) other ships.
 (20) Q: Did you hear fog signals from other
 (21) ships?
 (22) A: No.
 (23) I hear the —
 (24) Q: Just stick with the fog signal.
 (25) A: No, I never hear any fog signal.

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(1) **M. Kowalewski**
 (2) But I was doing anticollision watch, navigation
 (3) watch, hearing the signal, and when the visibility
 (4) is clearing up, taking the binocular to identify
 (5) the other ships to see how visibility is.
 (6) Q: Okay. So were you doing all those
 (7) things at once?
 (8) A: Yes.
 (9) Q: Okay.
 (10) And the officer on watch, while you
 (11) were navigating and looking at the radar and using
 (12) the binoculars and all this stuff, what was he
 (13) doing?
 (14) A: As I told before —
 (15) Q: Tell me again what was he doing.
 (16) A: The vessel has a beam 32 meters.
 (17) And the officer on watch was monitoring the port
 (18) side of the wing trying to hear the signals coming
 (19) from the port wing when it was not any visibility,
 (20) because he cannot watch anything so he was
 (21) concentrating on the hearing.
 (22) When visibility was clearing, he was
 (23) looking with the binocular to see the target, and
 (24) before he used to come to the radar to see the
 (25) target, if any target, he was taking the bearing

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(1) **M. Kowalewski**
 (2) where the target is supposed to be and looking on
 (3) the binocular.
 (4) But when we cannot see the crane
 (5) No. 3, that it will be the waste of the — our
 (6) concentration looking with the binocular when we
 (7) cannot see 80 meters. Our concentration was on
 (8) the hearing the signals. I mean, the officer's
 (9) concentration was hearing the signals.
 (10) Q: You followed a completely different
 (11) procedure when you were in bad weather after this
 (12) occurrence; didn't you?
 (13) A: I don't know what you mean now.
 (14) Q: I'm going to tell you. Do you not
 (15) remember at other times after May 22nd, 2004, you
 (16) had this Coast Guard investigation and everything,
 (17) you followed a completely different system when
 (18) you were in restricted visibility then you just
 (19) described to us?
 (20) MR. WIEGEL: Note my
 (21) objection.
 (22) Go ahead. But you answer it.
 (23) A: Actually, I don't know what you
 (24) mean. Maybe more precise.
 (25) Q: I'll be more precisely.

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(1) **M. Kowalewski**
 (2) On another occasion your log shows
 (3) visibility less than zero point, which to my
 (4) recollection it's either 1 or 4 nautical miles.
 (5) Captain was informed, started sounding fog
 (6) signals.
 (7) You never sounded the fog signal on
 (8) May 22nd; did you?
 (9) A: Sounded.
 (10) Q: You say you did sound the fog signal
 (11) on May 22nd?
 (12) A: Yes.
 (13) Q: You're sure of that now?
 (14) A: Yes.
 (15) Q: You read the Coast Guard review. Do
 (16) you see that — where they said you didn't sound
 (17) the fog signal?
 (18) A: I never told the Coast Guard I was
 (19) not sounding the fog signal.
 (20) Q: I didn't ask you what you told the
 (21) Coast Guard. I said: Did you see the Coast Guard
 (22) report?
 (23) A: I never see any —
 (24) Q: Hold it.
 (25) MR. WIEGEL: He's answering

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[1] *M. Kowalewski*
[2] your question. Let him answer it.
[3] MR. HEALEY: I did not finish
[4] my question.
[5] MR. WIEGEL: You did.
[6] MR. HEALEY: No, I said —
[7] Q: Are you telling me that you did
[8] sound a fog signal on NORASIA ALYA on May 22nd?
[9] A: Yes.
[10] Q: All right.
[11] And I said to you, now, did you see
[12] any Coast Guard materials that said the NORASIA
[13] ALYA did not sound their fog signal on May 22nd?
[14] A: No.
[15] MR. HEALEY: Okay. That's all
[16] you were asked.
[17] MR. WIEGEL: That's what he
[18] was trying to answer.
[19] Q: Now, again, in looking at your log
[20] and this page 17, I guess book No. II, you have an
[21] entry in the log, "sounding fog signal". See?
[22] All right. And I'm not going to
[23] review it with you now, you may do it at your
[24] leisure.
[25] But I'm telling you, Captain, there

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[1] *M. Kowalewski*
[2] are a number of entries, also on page 27, there's
[3] an entry again about bad visibility and it says,
[4] "Fog signal automatic, more one long blast every
[5] two minutes."
[6] On May 22nd you never made any entry
[7] about sounding the fog signals; did you?
[8] Look at your entry.
[9] A: Yes, I see that.
[10] Q: Did you make any entry on May 22nd
[11] about sounding the fog signals?
[12] A: I was never doing any entries in
[13] the —
[14] Q: Now —
[15] A: — only the officers on watch.
[16] Q: Do you want to answer my question?
[17] Is there any entry on May 22nd, 2004
[18] like there is on these other pages, see, that the
[19] vessel is sounding fog signals?
[20] A: It is different entry and different
[21] days.
[22] Q: You won't answer the question?
[23] A: No.
[24] Q: It's "no". Isn't that the answer,
[25] "no"? There's no entry that you sounded a fog

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[1] *M. Kowalewski*
[2] signal on May 22nd?
[3] A: I answer negative to your question
[4] because —
[5] Q: You can answer any way you want
[6] because the logbook will be in evidence.
[7] A: Yes, of course.
[8] Q: If you want to try to say you got an
[9] entry in there — is that what you're trying to
[10] tell me? On May 22nd, 2004 you got an entry that
[11] you —
[12] MR. WIEGEL: Stop. Stop.
[13] Note my objection.
[14] Q: You have an entry in there somewhere
[15] that you sounded a fog signal?
[16] MR. WIEGEL: Note my
[17] objection.
[18] MR. HEALEY: Go ahead, answer
[19] the question.
[20] MR. WIEGEL: You can answer.
[21] A: May I give the explanation?
[22] Q: No, no, you may answer the question.
[23] A: I don't know.
[24] Q: And then give an explanation.
[25] You don't know.

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[1] *M. Kowalewski*
[2] Go read page — the two pages for
[3] 22 May, 2004 and now answer my question whether
[4] there is an entry any where in there to the effect
[5] of sounding fog signal?
[6] (Pause.)
[7] A: I don't see any entries done by
[8] officers regarding the fog signal.
[9] Q: Is there an entry by somebody else?
[10] Is that what you're trying to tell me?
[11] A: Excuse me.
[12] MR. WIEGEL: Note my
[13] objection.
[14] Q: Captain, you said I don't see any
[15] entries by officers. I mean, I'm wondering, are
[16] you trying to tell me there is an entry by
[17] somebody else?
[18] A: Well —
[19] Q: Captain, on the 22nd of May it seems
[20] to me so simple. Is there or is there not an
[21] entry made by anybody in that logbook that you
[22] were — that the NORASIA ALYA was sounding a fog
[23] signal?
[24] A: I don't see such entry.
[25] Q: Okay. All right.

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[1] Now, you've already described to us
[2] the lookout procedures that you employed on the
[3] 22nd of May.
[4] You assumed that; didn't you, right?
[5] A: Yes.
[6] Q: After this accident, didn't you
[7] employ a completely different system for lookouts
[8] in restricted visibility?
[9] A: I don't understand the question.
[10] Q: I'll help you understand.
[11] There's an entry in your logbook,
[12] page 17, see, visibility less, as I've already
[13] told you, an zero point —
[14] A: Maybe —
[15] Q: I'll finish it. It says, "Duty
[16] ordinary seaman," O/S, "was sent to keep lookout
[17] on the forward — on the forward. Contact by UHF
[18] with him."
[19] So on that date you sent a human
[20] being, a live person up to the fo'c'sle to act as
[21] your lookout, right?
[22] A: Yes.
[23] Q: And again, the conditions were the
[24] same as on the 22nd. You couldn't see because of
[25]

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[1] the fog, right?
[2] A: Yes.
[3] Q: But you still sent a man up there,
[4] you sent a man up there because he is better
[5] positioned maybe to hear, he's closer to the
[6] front, right?
[7] A: Yes.
[8] Q: He's near your fo'c'sle. He can
[9] look right out a hole, a window in the front?
[10] A: Yes.
[11] Q: There's nothing — working on the
[12] bridge at times you're within a closed space,
[13] right? Hearing is better up there on the open
[14] space in the fo'c'sle; isn't it?
[15] A: It's the same good as hearing
[16] through the talk back system.
[17] Q: I understand that, but that wasn't
[18] the question.
[19] MR. WIEGEL: No.
[20] Q: The question was, for a man, anyone,
[21] officer, master on the bridge, all the doors are
[22] closed and everything, his hearing is a little
[23] more difficult than the man standing up there free
[24] on the fo'c'sle?
[25]

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[1] MR. WIEGEL: Note my
[2] objection.
[3] MR. HEALEY: Okay.
[4] A: Well, I don't know this.
[5] Q: Okay, if you don't know it, then
[6] doesn't even guess, please.
[7] Oh, again, I was just telling you
[8] what's an entry of what you did here. I said on
[9] one day when the visibility record shows you kept
[10] sounding the fog signal, you sent the ordinary up
[11] to the fo'c'sle to act as a lookout. You had a
[12] second lookout on the bridge.
[13] So afterwards, see, you had two of
[14] your seamen acting as human lookouts, correct?
[15] A: Correct.
[16] Q: That was good safe practice; wasn't
[17] it?
[18] A: Yes.
[19] Q: I mean, you were taking — that's
[20] good seamanship when you can hardly see to
[21] position your men where they are best able to spot
[22] and to hear; isn't that correct? That's good
[23] seamanship?
[24] A: Well, I cannot say the other one
[25]

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[1] was —
[2] Q: I didn't ask you about the other
[3] one. There you go jumping ahead of me.
[4] A: Yes. Yes. Yes.
[5] Q: You also have page 27. If you want
[6] to look in the log, once again the ship gets into
[7] visibility, this time it's below 0.1 nautical
[8] miles.
[9] Now, your log notes on this time,
[10] "fog signal automatic." There is such an entry
[11] confirming that you were using your fog signal,
[12] right?
[13] A: Yes.
[14] Q: And again, it says in here, "lookout
[15] on the forecandle, fo'c'sle deck," so once again,
[16] you sent a fellow up there, the very front of the
[17] vessel, correct?
[18] A: Correct.
[19] Q: Now, you did say, Captain, that this
[20] fog at times you didn't even see the crane closest
[21] to the bridge, and other times it would clear, you
[22] had some vision, right?
[23] A: Can you —
[24] Q: Yes, I'll repeat it.
[25]

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[1] You did describe this fog on the
[2] 22nd of May at the time being almost completely
[3] obscuring vision. You could hardly see the rear
[4] crane, remember?

[5] A: Yes.

[6] Q: But you did say other times you
[7] could run into little specs where it would open
[8] and you could have this vision up to maybe 80,
[9] 90 meters, right?

[10] A: Well —

[11] Q: It was patchy is what we're saying
[12] in spots.

[13] A: Yes, but still I don't understand
[14] your question at this point.

[15] Q: The question is: If, in fact, a man
[16] is in the fo'c'sle looking ahead, and he hits a
[17] clear spot, he is now able with his eyes to
[18] actually see, he could be of some use to you up
[19] there?

[20] A: Depends of his education.

[21] Q: Depends on what?

[22] A: Education.

[23] Q: Did you send a dope up there to act
[24] as your —

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[1] A: No.

[2] Q: You sent an experienced seaman?

[3] A: Yes.

[4] Q: You gave him a UHF radio?

[5] A: Yes.

[6] Q: You had every reason to believe that
[7] if you put a man up there and he spotted
[8] something, he would call you?

[9] A: I hope so he will do this.

[10] Q: Yes, Yes.

[11] But you didn't do that on the 22nd
[12] of May; did you?

[13] A: No.

[14] Q: You sent nobody to the fo'c'sle?

[15] A: The crew working.

[16] Q: I mean, you told us that the crew is
[17] working so they're not acting as a lookout if they
[18] are working.

[19] A: Yes, correct.

[20] Q: This is the crew that you told us
[21] about that if you hit the ship they would have
[22] seen it. If you hit the AVA CLAIRE, this crew
[23] would have seen it?

[24] A: Yes.

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[1] Q: And there's something else I want to
[2] ask you about about what you did after the
[3] accident.

[4] This is the same day you were
[5] talking about?

[6] A: 22nd?

[7] Q: No, no, no, I was going to tell you
[8] the chart on page 27. This is you going towards
[9] Shanghai. We already went over this. You said
[10] you had the fog signal on automatic, right? You
[11] had a man on the fo'c'sle, you had a man on the
[12] bridge.

[13] There's also an entry deck cadet,
[14] D/C, that same guy who had been your lookout S.
[15] Voelchner, A-R-P-A X-N-S bands on scanning various
[16] ranges.

[17] Was this guy assigned to monitor
[18] your radar equipment?

[19] MR. HEALEY: Does he have the
[20] right page?

[21] MR. WIEGEL: Do you have
[22] page 27?

[23] THE WITNESS: Yes.

[24] MR. WIEGEL: Yes, he's on

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[1] page 27.

[2] A: Yes.

[3] Q: So if you remember the question, all
[4] I'm saying is, that this shows that you assigned a
[5] particular man, and you said it yourself,
[6] multitasking, you assigned a deck cadet to
[7] monitor —

[8] A: But I don't see this written.

[9] MR. HEALEY: Do you want to
[10] him, Alan? Do you want to point it
[11] out to him?

[12] MR. WIEGEL: First in the
[13] 000400 entry.

[14] Q: Yes, it is. 0400 entry, one, two —
[15] in the third space, on the bridge D/C S.
[16] Voelchner.

[17] Do you got it now?

[18] A: Yes, Yes.

[19] Q: All time saying to you, you were on
[20] the bridge, correct?

[21] So you had taken over control
[22] because this a dangerous situation, right?

[23] Now, are you listening to me?

[24] A: Yes, I listen, I listen.

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(1) *M. Kowalewski*
 (2) Q: All right.
 (3) You put the two lookouts in position
 (4) and then you assigned the deck cadet to monitor
 (5) the radar, correct?
 (6) MR. WIEGEL: Note my
 (7) objection.
 (8) A: I not decided this. I don't know
 (9) the reason the second officer make that entry.
 (10) Q: That's okay. Then somebody, maybe
 (11) it wasn't you, because on May 22nd you didn't do
 (12) any of this stuff; did you? You didn't post
 (13) lookouts and you didn't assign anybody to the
 (14) radar; did you?
 (15) MR. WIEGEL: Note my
 (16) objection.
 (17) A: No.
 (18) Q: Now you're telling me on this one
 (19) where somebody takes all this care, fog signal,
 (20) two lookouts on —
 (21) MR. WIEGEL: Note my
 (22) objection.
 (23) Q: This might have been you —
 (24) MR. WIEGEL: Mr. Healey,
 (25) you're mischaracterizing what this

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(1) *M. Kowalewski*
 (2) logbook says. Please be careful.
 (3) MR. HEALEY: I shall.
 (4) But answer the question.
 (5) A: Well actually, you said that it was
 (6) not 22nd lookout posted.
 (7) The lookout 22nd was posted.
 (8) Q: That was you?
 (9) A: No. No.
 (10) 22nd there were two persons on the
 (11) bridge.
 (12) Q: All right. All right. Okay, fine.
 (13) Are you finished with your
 (14) statement, because I have no question in front of
 (15) you.
 (16) A: I finish.
 (17) Q: We can just continue with what I'm
 (18) asking you.
 (19) Now, back to May 22nd, and we now
 (20) know you had described for us the circumstances
 (21) that — under which the NORASIA ALYA was being
 (22) navigated; zero visibility at times, right,
 (23) 22 knots — is that top speed?
 (24) A: Yes.
 (25) Q: You have a full load of containers

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(1) *M. Kowalewski*
 (2) on deck; didn't you?
 (3) A: Please ask me more specific.
 (4) MR. WIEGEL: Object to the
 (5) form.
 (6) Q: You had containers stacked on the
 (7) deck in front of the housing; didn't you?
 (8) A: Yes.
 (9) Q: Where is that radar blind spot?
 (10) There was a blind spot in front of
 (11) your vessel, was there not, because of the
 (12) configuration where the radar antenna was,
 (13) containers in the front of the ship, that the
 (14) radar would not be able to pick up targets?
 (15) A: Dead sectors.
 (16) Q: Is that what you call it?
 (17) A: Dead sectors.
 (18) Q: So am correct when we say dead
 (19) sectors, the radar was infective? It couldn't get
 (20) the signal down in that area, right?
 (21) A: Yes. Yes.
 (22) Q: Now, all right.
 (23) And as we're going along the
 (24) circumstances, do you have that — you do have in
 (25) the front of you passage planning checklist.

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(1) *M. Kowalewski*
 (2) That's what I want to refer you to.
 (3) A: May I see, I don't have one.
 (4) Q: Yes. That's going to make it easier
 (5) because on mine I've highlighted something so your
 (6) eye will catch it right away.
 (7) Who prepared that document?
 (8) A: May I read the document?
 (9) Q: Oh, sure.
 (10) (Pause.)
 (11) MR. HEALEY: Let's take a
 (12) break now while he's reading it.
 (13) (Recess taken.)
 (14) BY MR. HEALEY:
 (15) Q: The question was:
 (16) You're looking at that plan, who
 (17) prepared that document; do you know?
 (18) A: I don't understand the question.
 (19) MR. WIEGEL: Who prepared
 (20) this?
 (21) Who prepared it?
 (22) THE WITNESS: Riner Brigg
 (23) (phonetic).
 (24) MR. WIEGEL: No, no, that's
 (25) who prepared the form.

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- (1) Who filled out the document?
 (2) THE WITNESS: Who filled out
 (3) the document?
 (4) MR. WIEGEL: Yes.
 (5) THE WITNESS: Second officer.
 (6) MR. HEALEY: Okay. All right.
 (7) MR. WIEGEL: Do you understand
 (8) what I mean now? Okay.
 (9) MR. HEALEY: Let me see it
 (10) again.
 (11) BY MR. HEALEY:
 (12) Q: Now we're getting around May 22nd,
 (13) '04, and now I want to get to the right entry
 (14) about 1230.
 (15) At that time, you were still in
 (16) east/west safety fairway running into New York,
 (17) right?
 (18) A: Yes.
 (19) Q: And I had showed you a document
 (20) which you have read it, and again, I was looking
 (21) at item 28 and I'm throwing that back to you.
 (22) Would you read that allowed since
 (23) you got it? Read it to me again, item 28.
 (24) A: "Heavy traffic in the brackets
 (25)

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- (1) including fishing boat areas marked."
 (2) Q: Had you ever been in this fairway
 (3) before?
 (4) A: Yes.
 (5) Q: Were you aware that at certain
 (6) points along that fairway there was fishing areas?
 (7) A: No.
 (8) MR. WIEGEL: Note my
 (9) objection.
 (10) Q: I'm just asking.
 (11) You were not aware of that?
 (12) A: No.
 (13) Q: Do you see that, again, item 28.
 (14) Did anybody mark or tell you in reference to this
 (15) voyage preparation plan about fishing areas you
 (16) might be passing by?
 (17) A: No.
 (18) Q: Just — you just went through all
 (19) your records and you've got a long sea-going
 (20) history.
 (21) How many times before this have you
 (22) been in the Port of New York?
 (23) A: I don't remember.
 (24) Q: Lots of times?
 (25)

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- (1) A: Many times.
 (2) Q: And you're still not aware that
 (3) there are any fishing grounds around; is that
 (4) correct?
 (5) MR. WIEGEL: Note my
 (6) objection.
 (7) A: The fishing grounds are marked on
 (8) the charts.
 (9) Q: Again, you're telling me —
 (10) A: But —
 (11) Q: I said are you aware?
 (12) A: I don't know the fishing ground is
 (13) on the safety fairway. I don't know this.
 (14) Q: Do you know how close to the safety
 (15) fairway fishing grounds are in these waters that
 (16) was southeast of Montauk Point?
 (17) MR. WIEGEL: Objection to the
 (18) form.
 (19) Q: There are fishing grounds there;
 (20) aren't there?
 (21) A: Yes, there are.
 (22) Q: Before you made this trip, did you
 (23) take any trouble to familiarize yourself with
 (24) where the fishing grounds are?
 (25)

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- (1) A: Yes.
 (2) Q: Oh, good.
 (3) A: I was looking on the chart.
 (4) Q: Yes.
 (5) A: And this is what was on the chart.
 (6) Q: And this what?
 (7) A: What I seen.
 (8) Q: Did you see any fishing grounds on
 (9) the charts you looked at?
 (10) A: I don't remember now this.
 (11) Q: What charts —
 (12) A: I need to take a look at the chart.
 (13) Q: Before you do, tell me what charts
 (14) you looked at?
 (15) A: British Admiralty chart.
 (16) Q: All right. I didn't ask any
 (17) questions about that, don't start reading that
 (18) now, we'll get all confused.
 (19) Because I just am trying to get to
 (20) the point where the NORASIA ALYA intentionally
 (21) left the safety fairway.
 (22) You had stated earlier on — are you
 (23) listening? If you're reading that, it's no wonder
 (24) you're not understanding the question because
 (25)

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[1] *M. Kowalewski*
[2] you're not listening to me?
[3] MR. WIEGEL: Note my
[4] objection.
[5] MR. HEALEY: You can object,
[6] but you're standing next to him
[7] talking about the chart.
[8] MR. WIEGEL: I didn't say a
[9] word to him, Mr. Healey.
[10] MR. HEALEY: Well, your
[11] presence is imposing.
[12] MR. WIEGEL: My presence is
[13] impose just sitting here.
[14] MR. HEALEY: When you're
[15] standing —
[16] MR. WIEGEL: I'm not going to
[17] leave the room, so you're going to
[18] have to deal with it.
[19] MR. HEALEY: I don't want you
[20] to leave the room, you're a friend of
[21] mine, but even friends can make a
[22] mistake.
[23] Q: At 1238, on 22 May, you said looking
[24] at your documents you said the NORASIA ALYA left
[25] the safety fairway?

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[1] *M. Kowalewski*
[2] A: Yes.
[3] Q: Okay.
[4] Now, this was intentional; was it
[5] not?
[6] A: Yes.
[7] Q: And this wasn't a drift or anything,
[8] correct?
[9] A: Overtaking the vessel ahead of me.
[10] Q: I'm saying this was something that
[11] was a determination made aboard the NORASIA ALYA,
[12] we're going to alter course?
[13] A: To overtake the other vessel.
[14] Q: We're going to alter course. I'm
[15] trying to get it.
[16] Generally towards the north limits
[17] of the safety freeway, right?
[18] A: Yes.
[19] Q: Eventually you altered it?
[20] A: Yes.
[21] Q: And you altered it in two segments;
[22] didn't you?
[23] A: You must take a look. I don't
[24] remember.
[25] Q: Where is that?

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[1] *M. Kowalewski*
[2] A: Yes.
[3] MR. WIEGEL: 1227.
[4] A: 1227.
[5] Q: Captain, look at your 1227, does
[6] that indicate — what are you looking at again?
[7] A: 1227.
[8] Q: What's the page?
[9] A: The number?
[10] Q: No. What is the this called?
[11] MR. WIEGEL: ECDIS printout.
[12] Q: That's all.
[13] A: Shall I take a look? 1227.
[14] Q: What you're going to do is,
[15] reviewing those records, tell us when the NORASIA
[16] ALYA made her first deliberate turn to the north
[17] to accomplish what you said was passing another
[18] vessel?
[19] (Pause.)
[20] A: That is the beginning of the
[21] maneuver overtaking maneuver.
[22] Q: What time?
[23] A: 1227.
[24] MR. GARGAN: And then look at
[25] 1233.

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[1] *M. Kowalewski*
[2] THE WITNESS: Yes.
[3] BY MR. HEALEY:
[4] Q: All right. Another alteration to
[5] the north?
[6] A: Still continuation that maneuver
[7] because you can see on the vector.
[8] Q: I understand it. It's a
[9] continuation of the maneuver.
[10] A: That is not another alteration.
[11] Q: But at some point —
[12] A: Beginning of the maneuver was here
[13] (indicating), here the overtaking occurs
[14] (indicating), was already stabilized, you can see
[15] the vector over the ground.
[16] Q: That's fine. All I want to get from
[17] is, at some point in this maneuver, to overtake
[18] and pass, you took the NORASIA ALYA out of the
[19] safety freeway, correct?
[20] A: Yes.
[21] Q: All right. And now we'll get a
[22] little detail.
[23] You said that was to overtake and
[24] pass. Who were you overtaking and passing?
[25] A: The vessel which is here.

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M. Kowalewski

- [1] *M. Kowalewski*
- [2] Q: Do you have any idea, can you
- [3] identify the vessel for me?
- [4] A: I see MMSI number.
- [5] Q: Okay. Fine.
- [6] A: And when the vessel has AIS —
- [7] Q: I know the name —
- [8] A: I remember it was a tanker vessel.
- [9] Q: And the name we had was PODRAVINA.
- [10] A: Was making 12, 17, 18 knots, if I
- [11] remember.
- [12] Q: Past your speed. No, you were going
- [13] 22, going less. The difference is it was going
- [14] slower.
- [15] A: Also full speed.
- [16] Q: You're going full speed?
- [17] A: And the other vessel as well.
- [18] Q: Before you started this maneuver,
- [19] did you try to raise anybody by radio? Did you
- [20] try to get on the phone, talk to anybody? Did you
- [21] tell the guy on the PODRAVINA, I'm passing you?
- [22] A: No.
- [23] Q: Did you take — do anything —
- [24] A: It was —
- [25] Q: Hold it a minute.

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M. Kowalewski

- [1] *M. Kowalewski*
- [2] Did you do anything to try to get
- [3] into contact with the ship that you were going to
- [4] pass?
- [5] A: I don't understand your question
- [6] now.
- [7] Q: Okay. You don't understand it.
- [8] You were going to pass the
- [9] PODRAVINA, and what I want to know is, if you sent
- [10] a carrier pigeon, you got on the phone, you waived
- [11] so that you would be able to have a communication
- [12] with them?
- [13] MR. WIEGEL: Objection to the
- [14] form.
- [15] A: It was not a communication —
- [16] Q: So that's it. There's no
- [17] communication —
- [18] A: — on the radio, but it was
- [19] interrogation by AIS.
- [20] Q: Okay. But you did not have any
- [21] conversation with the captain of the PODRAVINA,
- [22] I'm going to pass you, he said, okay, go ahead
- [23] pass me on my starboard, nothing like that, right?
- [24] A: No.
- [25] Q: So without slacking off, still at

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M. Kowalewski

- [1] *M. Kowalewski*
- [2] 22 knots, you already described the conditions,
- [3] whatever you had in the way of lookout and all
- [4] this stuff, you headed out into — outside of the
- [5] fairway?
- [6] A: Yes.
- [7] Q: Now why — was there any
- [8] compelling — we won't use the word.
- [9] Later on you when you got to —
- [10] right outside Ambrose, you dropped the anchor and
- [11] sat there for hours.
- [12] A: Yes.
- [13] Q: You didn't enter the port, Port
- [14] Elizabeth 'til the next morning.
- [15] A: Yes.
- [16] Q: What caused you to make this
- [17] high-speed passing of the PODRAVINA outside the
- [18] safety freeway? Why did you do that?
- [19] A: To meet the parameters of the main
- [20] engine.
- [21] Q: You wanted to keep the engine going
- [22] the whole time; is that right?
- [23] A: No, the engine has some certain
- [24] parameters.
- [25] Q: What does that mean, parameters?

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M. Kowalewski

- [1] *M. Kowalewski*
- [2] What do you mean when you tell me?
- [3] A: I have a document, I can show you.
- [4] Q: Don't show me because I won't
- [5] understand it. You explain it to me.
- [6] You used the term, you kept going at
- [7] 22 plus nautical miles outside the freeway to pass
- [8] this ship because of the engine parameters.
- [9] MR. WIEGEL: Object to the
- [10] form.
- [11] Q: What do you mean?
- [12] A: I mean, that the running engine for
- [13] prolonged time on the — on the power below
- [14] 70 percent is not recommended, and in that case,
- [15] when we will go, for example to the 96
- [16] revolutions, we will reach already 70 percent, and
- [17] 96 revolutions will reduce our speed maybe to
- [18] 20.5.
- [19] Q: It's most economical to keep going
- [20] at that speed?
- [21] A: That is not the question of the
- [22] economics.
- [23] Q: What is it a question of?
- [24] A: Of the safety of the main engine.
- [25] Q: Safety of main engine?

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M. Kowalewski

- (1) A: Own safety.
- (2) Q: If that engine isn't going at
- (3) 22-plus knots, it's compromising the safety?
- (4) A: Engine not supposed to be run below
- (5) 70 percent of the NCR.
- (6) Q: I'm just asking you, are you telling
- (7) me that it is your understanding that you must
- (8) maintain this engine at high speed or the engine
- (9) will be damaged?
- (10) A: The engine is designed to run on the
- (11) full speed for the long time.
- (12) Q: Do you — when you enter the Port of
- (13) New York and head into Port Elizabeth, do you
- (14) steam up to those great big cranes at 22 knots?
- (15) A: No.
- (16) Q: You do slow down at times?
- (17) A: Yes.
- (18) Q: You slow down when safety requires
- (19) it, correct?
- (20) A: But then —
- (21) Q: Wait a minute, is that correct, you
- (22) slow down when safety requires it?
- (23) A: When safety or navigation requires.
- (24) Q: You're not going to steam into Port
- (25)

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M. Kowalewski

- (1) Elizabeth and try to bring this big containership
- (2) up against the pier at 22 knots; are you?
- (3) A: No.
- (4) Q: No. You take into account the
- (5) circumstances that you're navigating in and adjust
- (6) your speed to it; don't you?
- (7) A: I operate the main engine as she's
- (8) designed.
- (9) Q: Well, you — that's very nice. Do
- (10) you want to try me question for a change?
- (11) I said to you, you will operate that
- (12) vessel's speed in accordance with circumstances
- (13) and safety, right?
- (14) A: Yes.
- (15) Q: Yes.
- (16) In other words, despite all this
- (17) stuff about the engine having to be operated at
- (18) 70 percent, the overriding concern for a master on
- (19) a ship is to make that vessel's navigation safe;
- (20) isn't that right?
- (21) A: Yes.
- (22) Q: And if that requires slowing down,
- (23) the master should slow down; shouldn't he?
- (24) Safety, safety requires?
- (25)

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M. Kowalewski

- (1) A: Yes.
- (2) Q: Yes, of course. I mean, that's
- (3) common sense; isn't it? One, whether you're in a
- (4) car, or a bicycle, or a boat, slow down if you're
- (5) in a crowded area?
- (6) A: Yes.
- (7) Q: Slow down if you can't see, right?
- (8) Slow down if you can't see when you're driving
- (9) your car; isn't that common sense?
- (10) A: Yes.
- (11) Q: Slow down when you're driving your
- (12) boat if you can't see; isn't that common sense?
- (13) MR. WIEGEL: Note my
- (14) objection.
- (15) MR. HEALEY: I got it.
- (16) Q: But isn't that common sense?
- (17) A: I don't understand the question.
- (18) Q: You understood the one when I said
- (19) to you it makes common sense to slow down when
- (20) you're driving your car and you can't see. You
- (21) understood that? Did you?
- (22) A: I cannot compare the car with the
- (23) ship.
- (24) Q: You understood that question I'm
- (25)

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M. Kowalewski

- (1) saying; didn't you?
- (2) A: No.
- (3) Q: Okay, no. Okay that's...
- (4) Do you say "no" to my questions when
- (5) you don't want to answer them?
- (6) MR. WIEGEL: Note my
- (7) objection.
- (8) A: Can you —
- (9) Q: Are you refusing to answer my
- (10) questions —
- (11) A: No —
- (12) Q: — by saying "no"?
- (13) A: — no. I'm not refusing.
- (14) MR. WIEGEL: Are you going to
- (15) give the court reporter a break?
- (16) MR. HEALEY: Okay.
- (17) (Recess taken.)
- (18) (Record read.)
- (19) BY MR. HEALEY:
- (20) Q: I think we just go back to, you
- (21) know, the time which we have at around 1230. Just
- (22) approximately when the NORASIA ALYA is starting to
- (23) make the move to pass the PODRAVINA, all right?
- (24) A: Yes.
- (25)

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M. Kowalewski

[1] **Q:** This is what we were talking about.
 [2] Now, you don't have to look at it,
 [3] I'll give it to you quickly, see if you agree.
 [4] When the NORASIA ALYA departed
 [5] Newport News, this is three days later, you say,
 [6] four days later, May 26, and I am looking at that
 [7] statement which you have labeled "Statement of
 [8] Facts". When you get to that. It's the second
 [9] page I'm looking at.
 [10] Okay, the second page, Captain,
 [11] there is — well, what I'm asking you, you can
 [12] look at this thing, when NORASIA ALYA was
 [13] departing Newport News, you noticed fishing boats
 [14] similar to the AVA CLAIRE, right?
 [15] **MR. WIEGEL:** Note my
 [16] objection.
 [17] **Q:** I'm not asking you now to read
 [18] something, I'm asking, do you remember in looking
 [19] at your notes, do you now remember departing
 [20] Newport News and noticing fishing boats similar to
 [21] the AVA CLAIRE?
 [22] **A:** Yes.
 [23] **Q:** Okay. All right.
 [24] Now, in order to make this judgment

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M. Kowalewski

[1] they were similar to the AVA CLAIRE, at this time
 [2] you had gotten some information about what the AVA
 [3] CLAIRE was like, correct?
 [4] **A:** I meant the same size —
 [5] **Q:** I —
 [6] **A:** — forty-three feet.
 [7] **Q:** I'm not trying to lead you some
 [8] place, I'm just saying when you say that boat's
 [9] the same as the AVA CLAIRE, that means you had to
 [10] know something about the general size of the AVA
 [11] CLAIRE, right?
 [12] **A:** Yes.
 [13] **Q:** Sure.
 [14] All I'm trying to get is: Where did
 [15] you get your information as to —
 [16] **A:** The internet. From internet.
 [17] **Q:** Okay. All right.
 [18] **A:** US Coast Guard web page.
 [19] **Q:** All right.
 [20] Now, these boats, never mind the AVA
 [21] CLAIRE, these other fishing boats that were
 [22] similar, you notice some had radar reflected, some
 [23] had not, correct?
 [24] **A:** Yes.

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M. Kowalewski

[1] **Q:** All right.
 [2] But you wanted to test your — your
 [3] radars as to targets this size on the way out,
 [4] right?
 [5] **A:** Yes.
 [6] **Q:** You did test them?
 [7] **A:** Yes.
 [8] **Q:** You found out that your radar did
 [9] pick up these 42-foot boats similar to the AVA
 [10] CLAIRE?
 [11] **A:** Yes.
 [12] **Q:** On May 22nd, at the time you were
 [13] making that turn out of the fairway, radar
 [14] reception was good; wasn't it?
 [15] **A:** Yes.
 [16] **Q:** I mean, we know there was fog, but
 [17] the fog doesn't affect radar.
 [18] **A:** The weather conditions —
 [19] **Q:** Were good for radar.
 [20] **A:** According to the manual, they were
 [21] good for the radar reception.
 [22] **Q:** All right.
 [23] Now, we now know two things: The
 [24] NORASIA ALYA, of course, if properly used by an

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M. Kowalewski

[1] intelligent person, had the capacity to pick up
 [2] vessels the size and configuration of the AVA
 [3] CLAIRE, right?
 [4] **A:** Yes.
 [5] **Q:** All right.
 [6] On May 22nd, the conditions,
 [7] according to the radar manuals, were very good to
 [8] pick up targets?
 [9] **A:** Yes.
 [10] **Q:** All right.
 [11] Before or while you were making this
 [12] turn to the north out of the fairway, was anybody
 [13] watching your radar to see if there was anything
 [14] in front of you?
 [15] All right, you look puzzled. Let's
 [16] go back.
 [17] I'm now taking you back, 22 May,
 [18] just at the time, remember around 1230, when you
 [19] started to go a little bit north to pass the
 [20] PODRAVINA, right?
 [21] At that point, you were going to
 [22] leave the safety fairway, right?
 [23] **A:** Correct.
 [24] **Q:** All right. And we've already spoken

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[1] *M. Kowalewski*
[2] about your radar had the capacity to pick up
[3] fishing boats like the AVA CLAIRE.
[4] Was anybody watching that radar as
[5] the NORASIA ALYA started to head north out of the
[6] fairway?
[7] A: I don't understand the question.
[8] MR. WIEGEL: Could you read
[9] back the question, please.
[10] (Record read.)
[11] A: I was watching the radar.
[12] Q: Okay. Did you see any targets in
[13] the area where you were going?
[14] A: Those which they are on the ECDIS
[15] recorded. I mean, by radar.
[16] Q: This is what we're talking about,
[17] what you said. I don't want to know anything
[18] else. I asked if anybody was watching. You said
[19] you were watching the screen.
[20] A: The screen.
[21] Q: And as you were making this turn,
[22] aside from watching the screen, what else were you
[23] doing, if anything?
[24] Somebody had to change the course of
[25] this vessel because you had been on automatic

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[1] *M. Kowalewski*
[2] pilot, right?
[3] A: The automatic pilot is — here's the
[4] radar (indicating), here's the automatic pilot
[5] (indicating). That is one-man operation console.
[6] Q: I understand it's not a big deal
[7] that somebody has to run down to the engine room
[8] and start turning things. It's almost a button;
[9] isn't it?
[10] A: No.
[11] Q: What is it to change your automatic
[12] pilot? Wait a minute, let me put this — I'm
[13] wrong, I'll go back.
[14] When you started this maneuver, the
[15] NORASIA ALYA was on automatic pilot.
[16] A: Yes.
[17] Q: Is it correct, even while on
[18] automatic pilot, adjustments can be made without
[19] going to hand steering to alter the course?
[20] A: I can make a hand steering and —
[21] MR. WIEGEL: Let him answer
[22] the question.
[23] Q: Go ahead. What I'm saying is: You
[24] can do it by hand steering. But if you are on
[25] automatic pilot, the automatic pilot has the

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[1] *M. Kowalewski*
[2] capacity that you can put something into it to
[3] change the course of the automatic pilot, correct?
[4] A: I don't understand the question.
[5] Q: If you're on automatic pilot, as you
[6] were —
[7] A: Yes.
[8] Q: — at that time, if you wanted to
[9] change course, did you have to take it off
[10] automatic pilot and go to hand steering?
[11] A: I don't need.
[12] Q: What did you do?
[13] A: I can use the override, or I can use
[14] the course adjustment knob.
[15] Q: So you did one of those two things?
[16] A: I don't remember which option I
[17] used.
[18] Q: I didn't say that. I said you did
[19] one of those two things?
[20] A: Yes. Yes.
[21] Q: That's what time asking you.
[22] A: Yes.
[23] Q: Okay.
[24] So it was you who did one of those
[25] two things to alter the course.

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[1] *M. Kowalewski*
[2] A: Yes.
[3] Q: All right. Okay.
[4] As you sit here, while you're doing
[5] that, altering the course by doing one of two
[6] things, can you recall whether you were picking up
[7] any targets on your radar while you were moving
[8] outside?
[9] A: You mean in the time of the
[10] alternation if any targets were picked up?
[11] Q: That's exactly what I want to know.
[12] A: I see only those which were picked
[13] up before in the past. And I don't see any new
[14] targets at this particular moment.
[15] Q: All right.
[16] And again, as we said, there's a
[17] dead sector in front where the radar doesn't show
[18] you anything, right?
[19] A: Yes.
[20] Q: Okay.
[21] A: Yes.
[22] Q: I just want to finish off this —
[23] this maneuvering.
[24] You moved out of fairway. At some
[25] point did you return to the fairway?

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(1) *M. Kowalewski*
 (2) A: Can you ask again?
 (3) Q: Yeah, about 1237, you know, not
 (4) exact, we've just been talking about it, how using
 (5) whatever it is, the override or something, you
 (6) altered course so the NORASIA ALYA went out the
 (7) north limit of the safety fairway.
 (8) You don't have to look at that,
 (9) listen to me. All I want to know is, did you come
 (10) back into the safety fairway at some point?
 (11) A: Later.
 (12) Q: Okay, that's all I'm asking.
 (13) A: Yes.
 (14) Q: Did you complete the passing of the
 (15) PODRAVINA?
 (16) You were trying to pass a ship
 (17) called the PODRAVINA.
 (18) A: Overtake.
 (19) Q: Overtake.
 (20) And did you — you overtook it, and
 (21) did you keep going in front of it?
 (22) A: Yes.
 (23) Q: And then did you come back into the
 (24) fairway. That's all I'm trying to figure out.
 (25) A: Yes. Yes.

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(1) *M. Kowalewski*
 (2) Q: Captain, are you aware of some
 (3) general rules governing, you know, navigation
 (4) usually referred to as the rules of the road?
 (5) A: Inland rules?
 (6) Q: Not inland. You weren't inland;
 (7) were you?
 (8) A: Oh, you mean co-regs.
 (9) Q: I just used another term, are they
 (10) also referred to as the rules of the road,
 (11) co-regs?
 (12) A: Yes.
 (13) Q: Same thing?
 (14) A: Yes.
 (15) Q: You're familiar with them?
 (16) A: Yes.
 (17) Q: Now, I'm not talking about just
 (18) doing what they say every time, but good
 (19) seamanship requires that a master try to
 (20) reasonably follow those rules; doesn't it?
 (21) A: Well —
 (22) Q: Listen to the question carefully. I
 (23) didn't say every time. I said good seamanship
 (24) would require that a master — let's put it this
 (25) way — try his reasonable best to follow those

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(1) *M. Kowalewski*
 (2) rules?
 (3) A: Correct.
 (4) Q: All right. You've already spoken
 (5) about the lookout.
 (6) There is a co-regs about safe speed;
 (7) isn't there?
 (8) A: Yes.
 (9) Q: All right. And just tell me your
 (10) understanding.
 (11) Does that rule require that the
 (12) speed should be adjusted to the circumstances in
 (13) which the vessel is proceeding?
 (14) A: Yes.
 (15) Q: That rule does not make allowance
 (16) for trying to keep up to 70 percent efficiency on
 (17) your engine; doesn't it?
 (18) Look at the rule, if you got it from
 (19) front of you. And I want to highlight.
 (20) Captain, some of the things that
 (21) should be considered in determining safe speed are
 (22) the state of visibility; am I right?
 (23) A: But maybe we can take a break I will
 (24) find my notes.
 (25) Q: No, no, the best way to start with

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(1) *M. Kowalewski*
 (2) is — you can find anything you want — look at —
 (3) A: Yes, I have already my notes.
 (4) Q: It's Rule 5 is what I'm referring
 (5) to.
 (6) A: Safe speed is Rule 6.
 (7) Q: 6. All right.
 (8) Now, I said Rule 6 generally would
 (9) require a master to look at all the circumstances
 (10) around him and decide what is a safe speed at this
 (11) time, right?
 (12) A: Yes.
 (13) Q: And Rule 6 says the things the
 (14) master should consider, among other things, is the
 (15) state of the visibility.
 (16) A: Yes.
 (17) Q: And you told us on May 22nd when you
 (18) were coming along at 22 knots the visibility was
 (19) at times zero.
 (20) A: Yes.
 (21) Q: And you also told us, am I correct,
 (22) that at no time while proceeding — listen to me,
 (23) I'm not finished — at no time while proceeding,
 (24) this is May 22nd in the fairway and running at
 (25) zero visibility at no time did you reduce speed.

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M. Kowalewski

[1] A: No.
[2] Q: And were you on automatic pilot this
[3] entire time?
[4] A: Yes.
[5] Q: Were you on — all right.
[6] There's another consideration in
[7] Rule 6, see, master should weigh the determining
[8] speed and its traffic density, right?
[9] Where you're reading, first place,
[10] are you aware of these rules? Are you just
[11] looking at them now for the first time?
[12] A: No, no, I aware, yeah.
[13] Q: I mean, you told me —
[14] A: I make some certain notes studying
[15] the rules and I want to properly answer to you.
[16] Q: All right, but I appreciate that.
[17] Do that.
[18] But if you can answer it simply,
[19] just answer it. Wait for the dynamite question
[20] before you start looking at your notes, see?
[21] Now, all I was saying to you, and
[22] you do agree, that consideration is traffic
[23] density?
[24] A: Yes?
[25]

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M. Kowalewski

[1] Q: In New York Harbor you have to be
[2] more careful then if you're down in the reaches of
[3] the Pacific, right?
[4] A: Yes.
[5] Q: Oh, sure.
[6] In the — this — do you call it
[7] safety fairway, that is something set up, and you
[8] already explained it Coast Guard regulation, that
[9] most incoming traffic should be using the fairway,
[10] right?
[11] A: Yes.
[12] Q: Also under Rule 6, among things that
[13] a master should consider, is the concentration of
[14] fishing vessels.
[15] A: Yes.
[16] Q: Okay.
[17] You already told us what you did
[18] know or did not know about fishing areas and
[19] fishing vessels in this area, right, so I won't go
[20] over that again.
[21] But in — in — I'm going to tell
[22] you take another look. Rule 18, they're talking
[23] about fishing vessels, now.
[24] A: I don't have Rule 18.
[25]

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M. Kowalewski

[1] Q: Follow me on Rule 18.
[2] Is it correct, Rule 18 is — you
[3] tell me when you got it.
[4] A: Responsibility between the vessels.
[5] Q: Yes, sir. Okay.
[6] Now I'm going to quote to you
[7] part — under A. "A power-driven vessel
[8] underway," first of all, that's the NORASIA ALYA;
[9] isn't it?
[10] A: Yes.
[11] Q: That's a power-driven vessel
[12] underway.
[13] Now, you follow, I'm going to skip
[14] down, it says: "Shall keep out of the way of,"
[15] and then subparagraph iii, it says, "Shall keep
[16] out of way of a vessel engaged in fishing."
[17] Do you see that?
[18] A: Yes.
[19] MR. WIEGEL: Note my
[20] objection.
[21] Q: Now, you can look through that
[22] thing. There's no exceptions. It simply says the
[23] power vessel should stay out of the way of the
[24] fishing vessel?
[25]

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M. Kowalewski

[1] A: Correct.
[2] MR. WIEGEL: Note my
[3] objection.
[4] Mr. Healey is
[5] mischaracterizing the rule.
[6] MR. HEALEY: All right.
[7] Now, I didn't mischaracterize
[8] anything.
[9] MR. WIEGEL: No.
[10] MR. HEALEY: Wait a minute. I
[11] didn't mischaracterize anything, I
[12] just read the rule.
[13] MR. WIEGEL: Mr. Healey, the
[14] record will be clear —
[15] MR. HEALEY: Make an
[16] objection.
[17] MR. WIEGEL: — the record
[18] will be clear.
[19] MR. HEALEY: I'm happy with
[20] the record.
[21] Q: Now, as you said you went online, I
[22] think you said, any way got some information about
[23] what the AVA CLAIRE was, right?
[24] You got some information as to the
[25]

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M. Kowalewski

[1] AVA CLAIRE after this accident?

[2] A: Yes.

[3] Q: Okay.

[4] It was a fishing vessel; was it not?

[5] A: Yes.

[6] Q: Now, again we're sticking with
[7] Rule 18, responsibility between vessels.

[8] And you've already said you agree it
[9] was read correctly, "A power-driven vessel," the
[10] NORASIA ALYA, it says, "shall keep out of the way
[11] of a vessel engaged in fishing."

[12] Now, that was you're responsibility,
[13] wasn't it, to follow Rule 18?

[14] MR. WIEGEL: Note my
[15] objection.

[16] A: No.

[17] Q: Oh, you didn't have to?

[18] NORASIA ALYA could just run down any
[19] fishing vessel they wanted? Was that what you
[20] thought the rule was?

[21] MR. WIEGEL: Note my
[22] objection.

[23] A: It was no visibility so I cannot —

[24] Q: Wait a minute. Wait a minute.

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M. Kowalewski

[1] MR. WIEGEL: No, he's

[2] explaining his answer. Let him
[3] explain his answer.

[4] MR. HEALEY: He is making a
[5] speech. I withdraw that question.

[6] Here's another question.

[7] Q: You can look at him all you want,
[8] but I'm still going to ask you the question.

[9] A: Please.

[10] Q: All I said to you was, under
[11] Rule 18, you did agree that it was your
[12] responsibility — and remember we said when
[13] reasonable — to the avoid the fishing vessel —

[14] MR. WIEGEL: Note my
[15] objection.

[16] Q: — do you agree?

[17] MR. WIEGEL: Note my
[18] objection.

[19] Q: That's not a signal, don't look at
[20] him.

[21] Do you agree that Rule 18 put the
[22] burden on you as the master of a powered-driven
[23] vessel to avoid a vessel engaged in fishing?

[24] MR. WIEGEL: Note my

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M. Kowalewski

[1] objection.

[2] A: I don't understand the question.

[3] MR. WIEGEL: Stop. Stop.

[4] Please read the question back.

[5] Q: Don't you understand?

[6] MR. HEALEY: No, no, he didn't
[7] understand it.

[8] Q: Let's try and figure out what you
[9] didn't understand.

[10] A: I don't understand what you're
[11] asking about the vessels in the visibility when
[12] this day was no visibility.

[13] Q: I agree with you. We're going to
[14] talk about that, believe me, I'm going to let you
[15] answer. I'm trying to set, see, as they say the
[16] general rule, and then I promise you I will let
[17] you explain.

[18] The general rule doesn't say
[19] anything about visibility; does it?

[20] MR. WIEGEL: Note my objection
[21] to that question.

[22] You're mischaracterizing the
[23] rule.

[24] MR. HEALEY: You made it.

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M. Kowalewski

[1] Q: What I'm just saying to you, Rule 18
[2] simply says — now you look at this and tell me if
[3] I'm mischaracterizing it. It says, "A
[4] powered-driven vessel underway shall keep out of
[5] way of a vessel engaged in fishing."

[6] A: I can read in the inland rules that
[7] this written —

[8] Q: Are you looking at the inland rules?

[9] MR. WIEGEL: They're the same.

[10] MR. HEALEY: I know, but he's
[11] smart enough to say it.

[12] A: I read in the inland rules that it
[13] is like this: "A power-driven vessel underway
[14] shall keep out of the way," the point three, "a
[15] vessel engaged in the fishing."

[16] Q: And we agree. Now look at it, and
[17] so you don't think I'm leaving you hanging.

[18] If a master knows that that vessel
[19] over there is engaged in fishing, the master of
[20] the power-driven vessel, if he knows that's a
[21] vessel engaged in fishing, then the master of the
[22] power-driven vessel has an obligation to avoid it;
[23] isn't that correct?

[24] A: If the master see the vessel.

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(1) *M. Kowalewski*
(2) Q: That's what I just said. If he
(3) knows.
(4) A: If he knows.
(5) But if it's a fishing vessel, he has
(6) to give the way for her.
(7) Q: Absolutely.
(8) Now, you were, as you told us,
(9) you're not quite clear exactly where there were
(10) fishing grounds.
(11) Before you left the safety
(12) freeway —
(13) A: Fairway.
(14) Q: I understand the visibility. You
(15) don't have to repeat that.
(16) Did you take any steps to determine
(17) whether there were any fishing vessels out there?
(18) MR. WIEGEL: Would you repeat
(19) that question, please I didn't hear
(20) it?
(21) (Record read.)
(22) A: Still I don't understand the
(23) question.
(24) Q: All right.
(25) A: If I cannot see anything, how can I

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(1) *M. Kowalewski*
(2) know who is the fishing boat?
(3) Q: Wait a minute.
(4) If you had somebody here — if you
(5) posted somebody up on the fo'c'sle and the fishing
(6) boat suddenly became clear in a gap in the fog,
(7) and as you said you would expect a guy to call
(8) you, that was a step that you could take to help
(9) to tell you if it was a fishing boat, right?
(10) A: So you mean that suddenly the vessel
(11) was seen on the distance of, let's say, about
(12) 100 meters, yes?
(13) Q: I'm just saying, Captain, that's an
(14) example, I'm not the captain, you are.
(15) You can't think of anything that you
(16) could have done in this bad visibility to tell us
(17) there was a fishing boat out there; is that what
(18) you're telling me?
(19) MR. WIEGEL: Note my
(20) objection.
(21) A: Well, if somebody see the vessel on
(22) the distance 100 meters, in the collision
(23) situation, that is already too late regardless to
(24) take the action.
(25) However, if the vessel see another

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(1) *M. Kowalewski*
(2) one, the other one is obliged by Rule No. 17 to
(3) take the action.
(4) Q: You're all loaded to do that, but I
(5) just want these answers.
(6) What you just said, under these
(7) circumstances at the distance you just quoted,
(8) right, the NORASIA ALYA, given a speed, her size,
(9) her load, and her turning capacity could not avoid
(10) the fishing boat; is that correct?
(11) A: Could avoid the fishing boat.
(12) Q: That's what you just said to me.
(13) If the guy on the fo'c'sle spotted
(14) the fishing boat in the gap in the fog, it was too
(15) late for the NORASIA ALYA to be able to alter the
(16) course; it was a done deal?
(17) A: Regardless of the speed of the
(18) vessel — regardless the speed of the NORASIA
(19) ALYA, even if it was 6 knots, the distance of a
(20) hundred meters for a such a ship is too small
(21) distance to the avoid the collision.
(22) But if it is visible contact —
(23) Q: Wait a minute. Wait a minute. I
(24) got you. Let me pursue that. I understand what
(25) you're saying. You say even at that slower speed,

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(1) *M. Kowalewski*
(2) see.
(3) Does the speed of the NORASIA ALYA,
(4) let's concentrate on 6 knots and 22 knots, have
(5) any effect on her maneuverability?
(6) A: Yes.
(7) Q: At 6 knots can you make a turn a
(8) little quicker — can you make the ship turn a
(9) little quicker?
(10) A: No.
(11) Q: Tell me what's the difference?
(12) A: We can refer to the maneuvering
(13) characteristic, and we can refer to the Rule
(14) No. 19.
(15) Q: I don't want you to the refer to a
(16) rule. Are you referring to the rules on the road?
(17) A: The most efficient —
(18) Q: Are you — don't refer to the rules
(19) on the road. I'm just asking about, as you know,
(20) the characteristics, the turning characteristic —
(21) A: The best is full speed.
(22) Q: — of the NORASIA ALYA?
(23) A: With the full speed the best.
(24) Q: Okay. That's all. That's all I was
(25) asking you.

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M. Kowalewski

- [1] *M. Kowalewski*
 [2] A: By course alteration.
 [3] Q: That's all you asked. You don't
 [4] have to go any place else.
 [5] Now, if you had a — a lookout right
 [6] up there in the fo'c'sle, and if he saw you hit
 [7] some ship, he'd give you a call on the UHF the
 [8] radio, right?
 [9] A: Yes.
 [10] Q: And you would have immediately
 [11] rendered assistance to any ship that was in
 [12] trouble?
 [13] A: Of course.
 [14] Q: So let's move to a general question.
 [15] How do you identify a ship as a
 [16] fishing vessel? Let's say you can see it. How do
 [17] you know it's a fishing vessel?
 [18] A: You mean in restricted visibility or
 [19] in normal visibility?
 [20] Q: The normal visibility tell me first.
 [21] How do you know it's a fishing boat?
 [22] A: Well, it will have a green and white
 [23] light at night.
 [24] Q: Okay. There are —
 [25] A: Lights.

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M. Kowalewski

- [1] *M. Kowalewski*
 [2] Q: — signals?
 [3] A: Or signals.
 [4] Q: All right.
 [5] A: Or I can identify also the fishing
 [6] boat by speed what the fishing boat is making and
 [7] how on the screen the fishing boat is behaving.
 [8] Q: I got you. All right.
 [9] A: Actually, from the radar in some
 [10] certain areas, I can know that it is a fishing
 [11] boat, even if there's no visibility.
 [12] Q: How do you know?
 [13] A: Because a lot of course alternations
 [14] and the speed is never exceeding, let's say,
 [15] 7 knots. For a big trawler this is 7 knots, but
 [16] small ships they are fishing sometimes one and a
 [17] half, 2 knots, 3 knots.
 [18] Q: I follow you.
 [19] A: But the default — the default
 [20] course and speed of the fishing boat on the radar
 [21] in case there is no visibility.
 [22] Q: I think I understand what you're
 [23] saying. It's obvious if there's visibility, a
 [24] fishing boat will, one, be flying some kind of
 [25] signal or sign; lights or something else?

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M. Kowalewski

- [1] *M. Kowalewski*
 [2] You also can see, if you see the
 [3] boat, I mean you can see it's fishing, you can see
 [4] nets and everything.
 [5] A: Yes.
 [6] Q: That's seeing.
 [7] But you said even in bad visibility
 [8] there are ways that you can identify a fishing
 [9] boat.
 [10] A: Yes.
 [11] Q: And one is by targeting the course
 [12] on —
 [13] A: Plotting target.
 [14] Q: Plotting on your radar, right?
 [15] A: Yes.
 [16] Q: Because I think —
 [17] A: It will never be a hundred percent
 [18] sure, but I will suspect such a vessel is a
 [19] fishing vessel.
 [20] I will classify the vessel as a
 [21] fishing vessel.
 [22] Q: I got you.
 [23] In other words, you will act on the
 [24] safe side if you're not sure.
 [25] A: Always.

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M. Kowalewski

- [1] *M. Kowalewski*
 [2] Q: You will be very cautious?
 [3] A: Always.
 [4] Q: And just tell me now, we're getting
 [5] near the end, I think, unless he wants me to move
 [6] on.
 [7] What cautions did you take, if any,
 [8] when you started the northward variation of the
 [9] NORASIA ALYA's course out of the freeway — I got
 [10] it.
 [11] THE COURT REPORTER: Fairway.
 [12] (Discussion off the record.)
 [13] MR. WIEGEL: Do you remember
 [14] it, or do you want it read to you
 [15] again?
 [16] Read the question back again.
 [17] (Record read.)
 [18] A: Continuously observing the targets
 [19] with who I was maneuvering. That means —
 [20] Q: I got you, you don't have to
 [21] explain.
 [22] A: — plotter, CPA, VCR, VCT.
 [23] Q: Go ahead. Is that it? That's it,
 [24] right?
 [25] A: Yes.

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M. Kowalewski

[1] I was maneuvering, overtaking the
[2] vessel, and then I was observing the parameters.

[3] Q: You were paying attention also to
[4] the —

[5] A: To everything that was around.

[6] Q: Including watching the vessel you
[7] were overtaking?

[8] A: Yes. The main —

[9] Q: Captain, you were doing an awful lot
[10] of things; weren't you? You were bringing your
[11] vessel at full speed outside the freeway —

[12] A: Fairway.

[13] Q: Outside of the fairway, going to
[14] pass a tanker in deep fog with two guys on the
[15] bridge and no lookout; isn't that correct? You
[16] had taken over a lot of responsibility.

[17] MR. WIEGEL: Note my
[18] objection.

[19] A: It was a lookout.

[20] Q: Now, I don't want to call it a — a
[21] sound signal. You had a sound signal?

[22] A: Yes.

[23] Q: What was the capacity? How far did
[24] that carry on the NORASIA ALYA?

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M. Kowalewski

[1] A: Two miles.

[2] MR. HEALEY: You know,
[3] Captain, I think I'm running out, so
[4] what I'm going to do is grab another
[5] cup of tea and I'll make sure he
[6] doesn't have some.

[7] (Discussion off the record.)

[8] MR. WIEGEL: The next exhibit
[9] is?

[10] THE COURT REPORTER: 14.

[11] MR. WIEGEL: We're going to
[12] mark a couple things.

[13] MR. HEALEY: I don't think we
[14] have any more questions. I'm pretty
[15] certain.

[16] MR. WIEGEL: We're going to
[17] mark —

[18] MR. HEALEY: Don't run off
[19] yet, but I don't think I have anything
[20] else to ask you, so you can stay right
[21] there.

[22] MR. WIEGEL: The statement of
[23] facts that we've been referring to,
[24] we'll mark this as 14.

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M. Kowalewski

[1] (Whereupon, Statement of
[2] facts, was marked as Kowalewski
[3] Exhibit 14 for identification, as of
[4] this date.)

[5] MR. WIEGEL: The chart will be
[6] 15.

[7] (Whereupon, Chart, was marked
[8] as Kowalewski Exhibit 15 for
[9] identification, as of this date.)

[10] MR. WIEGEL: Passage planning
[11] is 16.

[12] (Whereupon, Passage planning,
[13] was marked as Kowalewski Exhibit 16
[14] for identification, as of this date.)

[15] MR. WIEGEL: ECDIS printouts.

[16] (Whereupon, ECDIS printouts,
[17] was marked as Kowalewski Exhibit 17
[18] for identification, as of this date.)

[19] MR. WIEGEL: Radar ECDIS
[20] sector.

[21] (Whereupon, Radar ECDIS
[22] sector, was marked as Kowalewski
[23] Exhibit 18 for identification, as of
[24] this date.)

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M. Kowalewski

[1] MR. WIEGEL: Exhibit 19

[2] maneuvering characteristics.

[3] (Whereupon, Maneuvering
[4] characteristics, was marked as
[5] Kowalewski Exhibit 19 for
[6] identification, as of this date.)

[7] MR. WIEGEL: We're on the
[8] record doing this, right?

[9] THE COURT REPORTER: Yes.

[10] MR. WIEGEL: I want to —
[11] Mr. Healey, we're going to reserve our
[12] direct examination of the Captain
[13] until the time of trial.

[14] MR. HEALEY: Agreed.

[15] MR. WIEGEL: He is employed by
[16] one of the — employed by the
[17] owners/managers, or managers for the
[18] vessel, and so we intend to call him
[19] as a live witness at the time of
[20] trial, and — to the best of our
[21] ability, if, in fact, the situation
[22] changes such that he can't be
[23] available for trial, then we'll — if
[24] necessary, we'll make arrangements to

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[1] *M. Kowalewski*
[2] take it take a de bene esse deposition
[3] so we can preserve his direct
[4] testimony that way. But our intention
[5] is to call him as a witness at trial
[6] and reserve our direct questions 'til
[7] then.

[8] MR. HEALEY: Not only do I
[9] have no objection, I'll agree.

[10] MR. WIEGEL: With one small
[11] exception. I'm going to mark this
[12] next question — next document as
[13] Exhibit 20.

[14] MR. HEALEY: No problem.

[15] MR. WIEGEL: If you could show
[16] the — mark it and I'll show it to the
[17] witness.

[18] (Whereupon, Standing orders
[19] dated 30 June 2004, was marked as
[20] Kowalewski Exhibit 20 for
[21] identification, as of this date.)

EXAMINATION**BY MR. WIEGEL:**

[24] Q: Captain, do you recognize that
[25] document which we marked as Exhibit 20?

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[1] *M. Kowalewski*

[2] A: Yes, I recognize.

[3] Q: This document is dated 30 June 04,
[4] correct?

[5] A: Yes.

[6] Q: And can you tell me why this
[7] document — why you prepared this document?

[8] A: On this list is the new chief
[9] officer. It is the reason that I prepared the new
[10] list, because every one of the officers who is on
[11] board has to endorse with signature understanding.

[12] Q: Are the standing orders 1 through 16
[13] which are listed in Exhibit 20, the same standing
[14] orders that were in effect on May 22nd?

[15] A: One to 15. One to 15 exactly the
[16] same.

[17]
[18] (Continued next page; no
[19] deletions.)

[20]

[21]

[22]

[23]

[24]

[25]

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[1] *M. Kowalewski*

[2] MR. WIEGEL: Thank you. I

[3] have no further questions.

[4] Pilot card will be 21.

[5] (Whereupon, Pilot card, was
[6] marked as Kowalewski Exhibit 21 for
[7] identification, as of this date.)

[8] (Whereupon, at 3:44 p.m., the
[9] deposition was concluded.)

[10]

[11]

[12]

[13]

[14]

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

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[1]

[2]

[3]

[4] The deposition of MACIEJ KOWALEWSKI, taken in the
[5] matter, on the date, and at the time and place set
[6] out on the title page hereof.

[7]

[8]

[9] It was requested that the deposition be taken by
[10] the reporter and that same be reduced to
[11] typewritten form.

[12]

[13]

[14] It was agreed by and between counsel and the
[15] parties that the Deponent will read and sign the
[16] transcript of said deposition.

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

MACIEJ KOWALEWSKI
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[1]
[2] CERTIFICATE
[3]
[4] STATE OF _____ :
[5] COUNTY/CITY OF _____ :
[6]
[7] Before me, this day, personally appeared MACIEJ
[8] KOWALEWSKI, who, being duly sworn, states that the
[9] foregoing transcript of his/her deposition, taken
[10] in the matter, on the date, and at the time and
[11] place set out on the title page hereof,
[12] constitutes a true and accurate transcript of said
[13] deposition.
[14]
[15]
[16] MACIEJ KOWALEWSKI
[17]
[18]
[19] SUBSCRIBED and SWORN to before me this _____
day of _____, _____, in the
[20] jurisdiction aforesaid.
[21]
[22]
[23]
[24] My Commission Expires _____ Notary Public
[25]

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[1]
[2] DEPOSITION ERRATA SHEET
[3] RE:
FILE NO.
[4] CASE CAPTION: MICHAEL STEPSKI, et al., vs.
[5] THE M/V NORASIA ALYA, et al.,
[6] DEPONENT: MACIEJ KOWALEWSKI
DEPOSITION DATE: September 12, 2007
[7]
To the Reporter:
[8] I have read the entire transcript of my Deposition
taken in the captioned matter or the same has been
[9] read to me. I request for the following changes
be entered upon the record for the reasons
[10] indicated.
I have signed my name to the Errata Sheet and the
[11] appropriate Certificate and authorize you to
attach both to the original transcript.
[12]
[13]
[14]
[15]
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[2] CERTIFICATE
[3] STATE OF NEW YORK)
[4] COUNTY OF NEW YORK)
[5] I, LINDA D. DANIELCZYK, a Certified
[6] Shorthand Reporter, Registered
[7] Professional Reporter and Notary Public
[8] within and for the States of New York and
[9] New Jersey, do hereby certify:
[10] I reported the proceedings in the
[11] within entitled matter, and that the
[12] within transcript is a true record of such
[13] proceedings.
[14] I further certify that I am not
[15] related, by blood or marriage, to any of
[16] the parties in this matter and that I am
[17] in no way interested in the outcome of
[18] this matter.
[19] IN WITNESS WHEREOF, I have hereunto
[20] set my hand this 24th day of September,
[21] 2007.
[22]
[23] LINDA D. DANIELCZYK, C.S.R., R.P.R.
License No. 001002 - N.Y.
My Commission Expires:
[24] 9/20/2010 - No. 01DA4952883
[25]

Lawyer's Notes

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